



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 9 2006

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

Dear Federal Agency Environmental Executive:

The Energy Policy Act of 2005 (Act) included substantial revisions to the Underground Storage Tank (UST) provisions contained in Subtitle I of RCRA. Among other things, it imposes new reporting and compliance requirements on federal agencies with USTs, clarifies that states have authority to assess penalties against federal agencies for UST violations, and requires EPA and states to inspect all USTs within a certain schedule. We have been pleased with the effort that your Agency and the other federal agencies have made in coordinating with EPA and responding to the August 8, 2006, deadline to meet the UST compliance status reporting requirement of the Act.

In response to the Act, the Federal Facilities Enforcement Office (FFEO) and the Office of Underground Storage Tanks (OUST) are working with the EPA regional offices to implement an integrated strategy focused on improving federal facility compliance with UST requirements and protection of human health and the environment. Through the integrated strategy, we plan to align and maximize the Agency's diverse compliance assistance, monitoring, inspection and enforcement resources to achieve the desired result of improved federal facility UST compliance.

FFEO and OUST want to encourage you to make use of the many compliance assistance tools that EPA and the states have developed to help you comply with the UST regulations. On EPA's website OUST has created a specific link to help you comply with Federal regulations: <http://www.epa.gov/swerust1/cmplastc/index.htm>. This website also contains links to help you comply with state and local requirements. We will also be using <http://www.fedcenter.gov> to provide compliance assistance and perform outreach to improve federal facility UST compliance.

We want to highlight one provision of the Act that involves UST inspections. The Act requires either EPA or a state that receives funding under Subtitle I to inspect, by August 8, 2007, all regulated USTs that have not been inspected since December 22, 1998. In addition, after completion of these inspections by this August 8, 2007 deadline, EPA or a state that receives funding under Subtitle I must thereafter inspect all regulated USTs at least once every three years. Where inspections determine noncompliance with applicable federal or approved state UST requirements, formal enforcement actions with monetary penalties may follow. In the past, inspections

conducted by EPA and states have resulted in enforcement directed toward federal facilities. For example, last year EPA Region 2 issued an enforcement action against a federal facility for noncompliance with federal underground storage tank requirements with a proposed penalty of more than \$250,000.

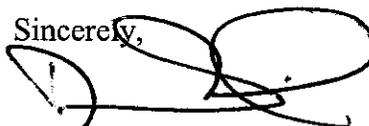
Collaboration between EPA and the regulated community is another means of achieving compliance. One such approach is your Agency's ability to self disclose violations or potential violations of the Act, pursuant to EPA's "*Incentives for Self Policing: Discovery, Disclosure, Correction and Prevention of Violations*," 65 FR 19,618 (04/11/00) (hereinafter, the "Audit Policy"). The Audit Policy encourages voluntary and prompt disclosure of violations or possible violations. When such disclosures are made, and specific Audit Policy criteria are met, EPA may consider a reduction or even an elimination of penalties. Determinations will be considered on a case-by-case basis. Further, the self-disclosure must be voluntary and not required by statute or regulations. Under EPA's "*Guidance for Underground Storage Tank Compliance Act of 2005 Federal Facility Reporting*," you had to provide compliance information based on the UST's last regulatory inspection. Violations identified by these past regulatory inspections do not qualify for Audit Policy mitigation. The Audit Policy is available at <http://www.epa.gov/compliance/incentives/auditing/auditpolicy.html>. You should be aware that several states also have audit/self-disclosure policies which may apply to your facilities. EPA has also developed an environmental compliance audit protocol evaluating RCRA regulated tanks including USTs regulated under RCRA Subtitle I. The audit protocol can be found at <http://www.epa.gov/compliance/resources/policies/incentives/auditing/apcol-reratanks.pdf>.

I strongly encourage you to take advantage of the Audit Policy as quickly as possible to identify any violations, or potential violations, and voluntarily correct and report them prior to any future state or federal inspection. If violations are discovered during any such regulatory inspection prior to self-disclosure, any penalty reductions that might otherwise have occurred under the Audit Policy would not be possible. It is important that you act quickly if you own or operate large or multiple facilities. EPA will be working with those federal agencies whose compliance reports included optional information on non-compliance based on agency auditing information.

Please share this important information with your Facilities Managers and/or Environmental Managers to ensure that you are in compliance with all underlying UST requirements, and to identify any tanks which may be eligible for Audit Policy considerations.

Thank you for your commitment to protect groundwater and human health by minimizing future UST releases. If you have any questions regarding application of the Audit Policy to federal agency UST violations, please contact Dan Drazen at 202/564-2328, or Melanie Garvey at 202/564-2579 of EPA's Federal Facilities Enforcement Office.

Sincerely,



David J. Kling, Director
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